



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9769]

RIN 1545- BK08

Removal of Allocation Rule for Disbursements from Designated Roth Accounts to Multiple Destinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations eliminating the requirement that each disbursement from a designated Roth account that is directly rolled over to an eligible retirement plan be treated as a separate distribution from any amount paid directly to the employee and therefore separately subject to the rule in section 72(e)(2) of the Internal Revenue Code (the Code) allocating pretax and after-tax amounts to each distribution. As a result of this change, if disbursements are made from a taxpayer's designated Roth account to the taxpayer and also to the taxpayer's Roth IRA or designated Roth account in a direct rollover, then pretax amounts will be allocated first to the direct rollover, rather than being allocated pro rata to each destination. Also, a taxpayer will be able to direct the allocation of pretax and after-tax amounts that are included in disbursements from a designated Roth account that are directly rolled over to multiple destinations, applying the same allocation rules to distributions from designated Roth accounts that apply to distributions from other types of accounts.

These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of designated Roth accounts under tax-favored retirement plans.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: These regulations generally apply to distributions on or after January 1, 2016 (or an earlier date chosen by the taxpayer that is on or after September 18, 2014). For more information see the “Effective/Applicability Dates” section of this preamble.

FOR FURTHER INFORMATION CONTACT: Michael Brewer at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 402(a) provides generally that any amount distributed from a trust described in section 401(a) that is exempt from tax under section 501(a) is taxable to the distributee under section 72 in the taxable year of the distributee in which distributed. Under section 403(b)(1), any amount distributed from a section 403(b) plan is also taxable to the distributee under section 72.

If a participant’s account balance in a plan qualified under section 401(a) or in a section 403(b) plan includes both after-tax and pretax amounts, then, under section 72(e)(8), each distribution (other than a distribution that is paid as part of an annuity) from the plan will include a pro rata share of both after-tax and pretax amounts. (Under section 72(d), a different allocation method applies to annuity distributions.)

Section 402(c) prescribes rules for amounts that are rolled over from qualified trusts to eligible retirement plans, including individual retirement accounts or annuities (“IRAs”). Subject to certain exceptions, section 402(c)(1) provides that if any portion of an eligible rollover distribution paid to an employee from a qualified trust is transferred to an eligible retirement plan, the portion of the distribution so transferred is not includible in gross income in the taxable year in which paid.

Under section 402(c)(2), the maximum portion of an eligible rollover distribution that may be rolled over in a transfer to which section 402(c)(1) applies generally cannot exceed the portion of the distribution that is otherwise includible in gross income. However, under section 402(c)(2)(A) and (B), the general rule does not apply to such a distribution to the extent that such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or such portion is transferred to an IRA.

In addition, section 402(c)(2) provides that, in the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to section 402(c)(1)).

Under section 402A, an applicable retirement plan may include a designated Roth account. An applicable retirement plan is defined in section 402A(e)(1) to mean a plan qualified under section 401(a), a section 403(b) plan, and a governmental section

457(b) plan. Section 402A(d) provides that a qualified distribution (as defined in section 402A(d)(2)) from a designated Roth account is not includible in gross income.

Under section 402A(d)(4), section 72 is applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

Section 1.402A-1, Q&A-5(a), of the Income Tax Regulations prescribes taxability rules for a distribution from a designated Roth account that is rolled over. Q&A-5(a) provides, in part, that “any amount paid in a direct rollover is treated as a separate distribution from any amount paid directly to the employee” (the “separate distribution rule”).

Proposed regulations limiting the applicability of the separate distribution rule of §1.402A-1, Q&A-5(a), were published on September 19, 2014 (REG-105739-11, 79 FR 56310). The proposed regulations achieved this result by adding, after the separate distribution rule in paragraph A-5(a), the following sentence: “The preceding sentence does not apply to distributions made on or after January 1, 2015; in addition, a taxpayer may elect not to apply the preceding sentence to distributions made on or after an earlier date that is no earlier than September 18, 2014.” Thus, under the proposed regulations, an amount paid in a direct rollover is not required to be treated as a separate distribution from any amount paid directly to the employee.

The proposed regulations were issued in conjunction with Notice 2014-54 (2014-41 IRB 670 (October 6, 2014)), which specified that a taxpayer may direct after-tax and pretax amounts that are simultaneously disbursed to multiple destinations so as to allocate them to specific destinations. Under Notice 2014-54, a taxpayer may direct the

allocation of after-tax and pretax amounts in connection with disbursements that are directly rolled over, as well as in connection with disbursements that are rolled over in 60-day rollovers.

No comments were received regarding the proposed regulations.

Explanation of Provisions

These regulations finalize the proposed regulations, with a 1-year delay of the applicability date (from January 1, 2015, to January 1, 2016). They are substantively the same as the proposed regulations, but express the rule differently to better reflect the ongoing rule and the transition rule. For distributions made on or after January 1, 2016, the final regulations remove the sentence in the existing regulations that provided the separate distribution rule. For earlier distributions, the final regulations add a sentence at the end of the paragraph which provides that a separate distribution rule applies to distributions made prior to January 1, 2016, unless a taxpayer elects not to apply that rule with respect to a distribution made on or after September 18, 2014.

Effective/Applicability Dates

These regulations apply to distributions from designated Roth accounts made on or after January 1, 2016, and for such distributions taxpayers are required to follow the allocation rules described in Notice 2014-54.

These regulations also preserve the separate distribution rule for distributions made prior to the January 1, 2016, applicability date, except that a taxpayer is permitted to choose not to apply the separate distribution rule to distributions that are made on or after September 18, 2014, and before January 1, 2016. Taxpayers choosing not to apply the separate distribution rule to distributions made during that transition period,

must apply a reasonable interpretation of the last sentence of section 402(c)(2) (generally requiring that pretax amounts be treated as rolled over first) to allocate pretax and after-tax amounts among disbursements made to multiple destinations. For this purpose, a reasonable interpretation of the last sentence of section 402(c)(2) includes the rules described in Notice 2014-54.

Statement of Availability of IRS Documents

Notice 2014-54 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael Brewer, Office of the IRS Associate Chief Counsel (Tax Exempt and Government Entities). However, other

personnel from the IRS and the Department of Treasury participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.402A-1 is amended by removing the third sentence of paragraph A-5(a) and adding a new sentence to the end of paragraph A-5(a) to read as follows:

§1.402A-1 Designated Roth Accounts.

* * * * *

A-5. (a) * * * For distributions made prior to January 1, 2016, any amount paid in a direct rollover is treated as a separate distribution from any amount paid directly to

the employee, except that taxpayers may choose not to apply this sentence to distributions made on or after September 18, 2014, and before January 1, 2016.

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John M. Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: March 24, 2016.

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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